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JAN 30 2009

In re Application of	:	OFFICE OF PETITIONS
Austin, et al.	:	
Application No. 10/027,714	:	ON PETITION
Filed: December 21, 2001	:	
Attorney Docket No. AUZ-002 P	:	
For: DETECTION OF OBSERVERS AND	:	
COUNTERMEASURES AGAINST	:	
OBSERVERS	:	

This is a decision on the petition under 37 CFR 1.181, filed December 23, 2008 (certificate of mailing date December 18, 2008), requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to seek court review of the Board of Patent Appeals and Interferences Decision on Appeal within two months of the July 29, 2008 decision. The Office contended this application became abandoned on September 30, 2008. A Notice of Abandonment was mailed on October 6, 2008.

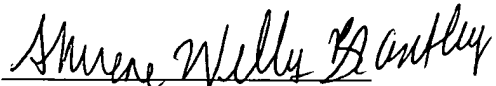
Petitioners argue that the application did not become abandoned because a RCE and amendment were filed on certificate of mailing date September 26, 2008 and received in the Office on September 30, 2008. Therefore, a proper filing was made within the two month period for action. The correspondence is present in the application file.

The filing of a RCE (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action, will result in the finality of the rejection or action being withdrawn and the submission being considered. Pursuant to 37 CFR 1.114, a RCE and amendment with new claims is a proper follow-up submission, if made within two months of the Board decision.

The petition under 37 CFR 1.181 is **GRANTED** and the October 6, 2008 Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

Accordingly, the application file will be forwarded to Technology Center A.U. 2434 for further examination.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
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Office of the Deputy Commissioner
for Patent Examination Policy